



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

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The Honorable James E. Doyle, Jr.  
Governor of Wisconsin  
115 East, State Capitol  
Madison, WI 53702

The Honorable Scott Fitzgerald  
Senate Minority Leader  
202 South, State Capitol  
Madison, WI 53702

The Honorable Russell Decker  
Senate Majority Leader  
211 South, State Capitol  
Madison, WI 53702

The Honorable Jeff Fitzgerald  
Assembly Minority Leader  
201 West, State Capitol  
Madison, WI 53702

The Honorable Michael Sheridan  
Speaker of the Assembly  
211 West, State Capitol  
Madison, WI 53702

Dear Governor Doyle, Senator Decker, Senator Fitzgerald, Speaker Sheridan and Representative Fitzgerald:

I am writing to update you on the progress that's been made at the Department of Justice's (DOJ) State Crime Laboratories regarding the processing of DNA evidence. I am pleased to report that there is no longer a backlog of cases awaiting DNA forensic analysis. We have succeeded in eliminating the backlog and are now providing law enforcement and prosecutors the timely analysis needed to help identify offenders and hold them accountable.

Let me update you on how we were able to succeed in eliminating the DNA backlog and the current status of the DNA forensic units at the State Crime Laboratories.

**The DNA Backlog as of December 31, 2006**

At the end of 2006, there were 1,785 DNA cases submitted by law enforcement agencies or other statutory requesters entitled to forensic analysis that had been received by the State Crime Laboratories and were waiting to be analyzed. To put that number into perspective, in 2006, the State Crime Laboratories analyzed an average of 96 cases per month and received almost twice that number – an average of 185.5 per month. In simple terms, for nearly every case worked, another was put on the shelf and added to the backlog.

## **The Role of DNA Forensics In The Criminal Justice System**

I made it my first priority as Attorney General to set up a plan to eliminate the backlog. I made it a priority because I understand just how important DNA can be to solving crimes and securing convictions, as well as exonerating the innocent.

Because individuals have unique DNA, DNA forensic analysis is a powerful and accurate identification tool. DNA analysis is generally used to solve crimes in one of two ways. If biological evidence is submitted from a crime for DNA analysis, analysts extract that material and attempt to generate a DNA profile. If a profile can be generated, it is compared against DNA profiles generated from specimens consensually provided by individuals during the course of the investigation of that crime (known as "elimination samples") and against any samples obtained from suspects. If unidentified profiles from crime scenes remain, they are compared against offender profiles maintained in CODIS, the Combined DNA Index System. The results of any of these comparisons may help identify a suspect in the crime.

DNA profiles generated from a crime are also compared against forensic DNA databases – databases containing DNA profiles from other crime scenes. These comparisons can link crimes to the same perpetrator, often increasing the chance that a suspect can be identified and multiple crimes can be solved.

DNA evidence not only helps to identify criminals and solve crimes, it helps to convict criminals. Juries give DNA evidence considerable evidentiary weight. Conversely, juries may infer innocence based upon the lack of DNA evidence when they believe it should be there. DNA also can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes. In sum, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system.

When biological evidence exists, DNA can be used to identify criminals and solve crimes with incredible accuracy. The more quickly DNA evidence is processed, the more efficiently and effectively crimes are investigated, suspects are identified, and criminal defendants are prosecuted. Not only may the rapid processing of DNA evidence help provide justice in a particular case, it protects the public from further criminal activity that may occur if cases remain unsolved. Prompt DNA analysis also allows law enforcement to do more by freeing up law enforcement resources that would have otherwise been deployed tracking down leads in cases that could be solved through DNA analysis.

DNA analysis is performed by the State Crime Laboratories, which exist within the Department of Justice, Division of Law Enforcement Services. DNA analysis is required by statute in a variety of circumstances, including when a law enforcement agency submits biological evidence regarding a felony investigation and when analysis is requested by a defense attorney, pursuant to a court order. This analysis is performed by the DNA forensic analysis units at the State Crime Laboratories in Madison and Milwaukee.

Separate from case work and unrelated to the case backlog existing in 2006 is the DNA data bank. The State Crime Laboratories' DNA data bank unit analyzes biological samples obtained from convicted offenders primarily by the Department of Corrections and sheriffs. From these samples, DNA profiles are generated and maintained in a data bank which is part of CODIS (Combined DNA Index System) pursuant to Wis. Stat. § 165.77.

### **Internal Review of DNA Resources and Proposing A Backlog Elimination Plan**

Immediately upon assuming my duties as Attorney General in January, 2007, I ordered an internal review of the status of crime laboratory resources for DNA analysis. A report documenting the findings of that review and recommending strategies for eliminating the backlog (the "DNA Backlog Report") was completed and released on February 12, 2007.<sup>1</sup>

The DNA backlog needed to be urgently addressed, but it could not be eliminated overnight. Knowing that it would take time, but that time was crucial to public safety, we set a goal of eliminating the DNA backlog by the fall of 2010. As we discussed in the DNA Backlog Report, eliminating the DNA backlog means having every DNA case assigned to an analyst within 30 days of receipt and, except in unusual cases, worked and out of the crime lab within 60 days. The DNA Backlog Report looked at resources in place in 2007, possible increases in efficiencies, and projected case load and trends against the goal of eliminating the DNA backlog by the fall of 2010.

The DNA Backlog Report projected that keeping the State Crime Laboratories at the same staffing level would result in almost 6,000 unprocessed cases by the end of 2010 and the cost of eliminating such a backlog by outsourcing to a private lab was estimated at \$42.8 million.

The DNA Backlog Report presented three additional alternatives to maintaining the 2006 status quo.<sup>2</sup> One was to add 15 new DNA positions to the State Crime Laboratories and \$3.2 million to its 2007-2009 biennial appropriation. Although this approach added staff and provided funding to implement technological efficiencies, our analysis showed that it would not eliminate the DNA backlog and projected there would be 3,580 unprocessed cases by the end of 2010. If outsourcing would be used to process those cases, the cost was estimated to be \$25.8 million.

Another option was to add enough resources to the State Crime Laboratories to eliminate the backlog by 2010 without outsourcing. If the biennial budget process was used to establish new positions and related funding, we anticipated new scientists could be added by January 1, 2008 – but 37 new DNA staff would be required.

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<sup>1</sup> The DNA Backlog Report is available at <http://www.doj.state.wi.us/news/files/DNAAnalysisPlan.pdf>.

<sup>2</sup> In each alternative, the DNA Backlog Report built in anticipated improvements in efficiency and anticipated increase in caseloads.

The final option and my preferred alternative was to obtain the authority to hire analysts and begin implementing the DNA backlog elimination plan sooner. If DNA analysts could start six months earlier, remarkably, six fewer staff were projected to be required to achieve the same results. While this plan would cost a little more in the short run (as scientists would be hired and paid sooner), productivity would be more quickly realized and, in the long run, it would be more cost effective to add a smaller number of DNA staff. This option also had the benefit of minimizing the likelihood of having excess staff once the backlog was eliminated.

In sum, the most cost effective approach to eliminating the DNA backlog was also the one that would begin to deliver results most quickly. With that knowledge, I asked the Legislature to adopt my plan immediately. With bipartisan legislative support and the support of Governor Doyle, the plan and the authority to bring on 31 new DNA personnel was approved as part of 2007 Wisconsin Act 5, enacted March 16, 2007. Full funding for the plan was provided in the biennial budget bill, 2007 Wisconsin Act 20.

### **Implementing the Backlog Elimination Plan**

Once 2007 Act 5 was signed and positions were authorized to be filled, the DOJ began a nationwide recruitment for DNA analysts. All but one of the 31 new DNA staff reported for work during June 2007, the last hired on July 2, 2007.

As the recruitment of staff was being conducted, DOJ staff began to explore the issue of training a large number of new analysts.<sup>3</sup> Traditional training involved the pairing of a new analyst with an experienced analyst. Thus, the new analyst received the majority of training by job shadowing. This approach detracts from the productivity of the experienced analyst. As the number of DNA analysts was basically doubling, the traditional approach of paired training was not acceptable because it would have too great of an adverse effect on productivity.

We contacted our peers in other states to see how they addressed this problem. We were unable to find another forensic lab in the country that had hired and trained such a large number of new analysts at one time. Fortunately, the National Forensic Science Training Center (NFSTC) in Largo, Florida had received a grant from the National Institute of Justice to develop a comprehensive training program for DNA analysts. The NFSTC agreed to train our new analysts at our location as part of fulfilling the requirements of their federal grant. The only cost to Wisconsin would be the salaries and fringe benefits of the new analysts and the lab supplies used in training. Our experienced analysts would be free to do case work and stem growth of the backlog.

Space was also needed to accommodate the new employees – both for training, and for case work once they were trained. Each analyst must have lab bench space for examination and analysis of evidence and desk space for reporting and documentation. Existing lab space would

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<sup>3</sup> Typically, it takes a year from hiring for a new analyst to be trained to meet national standards before they can work cases.

not accommodate new staff. Fortunately, there was vacant space adjacent to the Madison Crime Laboratory. Working with the Department of Administration, the DOJ was able to acquire and remodel the space into new DNA laboratory space. At the same time, we undertook temporary renovation of vacated old laboratory space in the same building to create training rooms while permanent lab space was being constructed. Construction was targeted for completion by July 1, 2008 to coincide with the anticipated conclusion of training.

Given caseload distribution, it was also desirable to expand DNA capacity in Milwaukee as well. By remodeling parts of the Milwaukee Crime lab and moving the DNA data bank unit to Madison, we were able to add space – albeit tight – for nine additional forensic DNA positions in Milwaukee.

On June 25, 2008, the new lab space at the State Crime Laboratory in Madison was completed and new DNA analysts formally completed their training. Within a few days, analysts settled into the new lab space and began case work.

### **Efficiencies Achieved; Eliminating the Backlog**

Simultaneous to the training of new analysts, robotic technology and improved instrumentation was being implemented in both Madison and Milwaukee. Other changes took place as well, including personnel changes, changes to work group structure, enhanced automation of processes, and other changes to practices and procedures. These changes increased our ability to work more cases before any new analysts began to actively work cases. Consequently, in 2007, the State Crime Laboratories worked 1,983 cases, or 165 cases a month – up 72% from 2006.

These efficiencies continued throughout 2008. During the first six months of 2008 – prior to the time new analysts had completed training, productivity continued to improve. Once the new analysts were working cases on the bench full time, productivity took another step forward and in 2008, the State Crime Laboratories worked 4,011 cases, an average of 334 cases per month – about three and a half times more cases than in 2006. In 2009, the State Crime Laboratories worked 4,548 cases, an average of 379 cases per month – nearly four times as many cases as in 2006. These improvements surpassed the DOJ's aggressive efficiency expectations laid out in the February 2007 report. While DNA resources doubled, the DOJ quadrupled its ability to process DNA cases.

### **Current Status: No Backlog**

In the February 2007 DNA Backlog Report, we established the goal of eliminating the backlog during 2010. I am pleased to tell you today that the backlog of DNA cases has been eliminated.

As indicated in the DNA Backlog Report, a backlog is any case that has been received by the State Crime Laboratories and is not being actively worked on within 30 days. Cases assigned and actively worked on within 30 days should, absent unique circumstances, be completed within 60 days.<sup>4</sup>

By June 2009, the average turnaround time for a DNA case from receipt to completion was 60 days. By comparison, in January 2007, when I took office, the average turnaround time for DNA cases was 270 days. Today, cases are being assigned to an analyst within a few days of being received at the State Crime Laboratories and, absent unique circumstances, all are completed within 60 days of receipt.

Another way to view our progress is to look at the number of pending cases at the end of a given month as compared with the number of cases submitted for analysis. If there is no backlog, the number of cases pending at the end of a month should be similar to the number of cases received that month or typically received in a given month. At the end of March 2010, there were 351 cases that had been received but not yet fully worked. During the same month, 500 cases were submitted (and on average, the State Crime Laboratories have received 438 per month over the first quarter of 2010). Thus, for the most part, cases pending at the end of March 2010 were those cases submitted that month. March is the second consecutive month in which there were fewer cases pending at the end of the month than were received during the month. The bottom line is that the backlog is eliminated and analysts are now devoting their time to current cases, and not cases submitted months or even years earlier.

### **Looking Ahead**

While the DNA backlog has been eliminated, trends indicate that law enforcement is taking advantage of this technology more than ever. In 2006, the average number of cases submitted for DNA analysis was 186 per month. In 2009, the number of cases more than doubled to 385 per month. Through the first quarter of 2010, the average number of cases submitted increased to 438. While through the use of statistic models, we anticipated an increase in submissions in the DNA Backlog Report, increases have exceeded our expectations. We attribute these submission increases to the continued importance of DNA as an effective forensic tool and the fact that when a law enforcement agency submits evidence to the State Crime Laboratory for analysis, they have increased confidence that forensic analysis of that evidence will be performed in a timely manner.

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<sup>4</sup> Unique circumstances may include: cases where the volume of samples in an individual case are so numerous that it is not possible for an analyst to process all samples in this timeframe; open cases where additional evidence is received while previously received evidence is still undergoing processing; cold cases; or cases where evidence must be processed by other laboratory disciplines before being examined for DNA. Other forensic analysis offered at the State Crime Laboratories include drug identification, toxicology, trace, firearms/toolmark identification, fingerprinting, forensic imaging, and document examination.

By more than quadrupling productivity on cases worked since 2006 – between April 2009 and March 2010, analysts completed 408 cases per month on average and over the first quarter of this year completed 504 cases per month on average – I expect that the State Crime Laboratories, will be able to keep pace with law enforcement demands in the near term using existing resources. As shown above, productivity roughly matches submissions and there is no excess analyst capacity. If the rate of submission growth continues at its current pace without a corresponding increase in productivity, this would require an increase in personnel. Conversely, should productivity growth exceed submissions, analyst vacancies could be maintained longer, and if the trend appears permanent, position authority could be revisited. To that end, we will monitor trends in submissions and productivity to ensure the State is able to continue to make this valuable tool – DNA analysis – available to law enforcement officers in a timely fashion so that they may preserve public safety and make better use of scarce local and state resources.

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My thanks to all of you who have supported and will continue to support DNA forensics at the State Crime Laboratories specifically and public safety generally. I have no doubt that the elimination of the DNA backlog would not have been possible without the new positions you authorized, the increase in productivity, and the support of law enforcement. If we had received analysts but not improved productivity, we estimate that the backlog would have nearly tripled and there would be between 4,500 and 5,000 cases pending in the State Crime Laboratories today. And, approximately the same number of pending cases would exist if we had increased per analyst productivity at the same rate as we have but not added new personnel.

I am confident that our ability to work together and DOJ's hard work eliminating the backlog has led to more offenders being identified and held accountable, has played a role in preventing crime that might have otherwise occurred, has saved significant resources for local governments, and has made Wisconsin a safer place to live and work.

Sincerely,



J.B. VAN HOLLEN  
Attorney General

JBV:RPT:GHH:KMS/pss

c: Gary H. Hamblin, Administrator, Law Enforcement Services Division, DOJ  
The Honorable Members of the Wisconsin Legislature  
Wisconsin District Attorneys  
Wisconsin Sheriffs